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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Nebraska Service Center Date: SEP 16 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established that he meets the requisite number of regulatory criteria to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if...
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner seeks classification as an alien with extraordinary ability as a professional hockey player. At the time the petition was filed, the petitioner was a center for the Chicago Blackhawks, a National Hockey League (NHL) team.

On appeal, counsel argues that federal court decisions have established that long-standing membership in the National Hockey League (NHL) is indicative of extraordinary ability in athletics. Counsel states that two federal court decisions have held that professional hockey

players with sustained NHL careers are entitled to status as aliens of extraordinary ability.[1] Counsel submitted copies of these decisions, but did not cite passages supporting his assertion. Review of these decisions reveals nothing to support counsel's assertion that long-standing membership in the NHL is, itself, sufficient grounds for approval of a visa petition under section 203(b)(1)(A) of the Act. The judge in *Matter of Grimson* states only that, in a previous remand order, "the court directed [the Service] to consider plaintiff's argument that a sustained career in the NHL demonstrates extraordinary ability" (p. 3). The judge then discusses specific factors which, in his opinion, placed the plaintiff near the top of his field. In *Matter of Muni*, the judge cited the plaintiff's "sustained membership on the **championship** team" (emphasis added) but did not declare that such membership was sufficient to establish extraordinary ability.

This office rejects counsel's assertion that several years of play in the NHL is automatic evidence of extraordinary ability. In *Matter of Racine*, 1995 WL 153319 (N.D. Ill. Feb. 16, 1995), the court found that the plaintiff was "a well-established player in the NHL," but it did not indicate that this fact alone mandated approval of the petition. Rather, the judge discussed, at length, specific evidence comparing the plaintiff to other NHL players.

The record plainly shows that in each of the above cases, the courts have relied upon specific comparative evidence rather than the duration of the plaintiffs' employment with the NHL. We further note that the judge in *Matter of Racine* states: "the plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL." It is further noted that the plaintiffs in the above-cited cases had won awards and been consistently ranked among the top players. From the descriptions offered, the players in the cited court cases had demonstrated records of accomplishment placing them above most other players in the NHL. The Bureau acknowledges the court's determination that eligibility for this visa classification is not limited to "superstars," but at the same time it must be stressed that the petitioner does not establish that he is among the top NHL players simply by submitting vaguely-worded affidavits which describe him in favorable terms, and which offer the unacceptable assertion that the petitioner is "extraordinary" by virtue of his playing for an NHL team.

The reputation of the NHL, or the duration of the petitioner's membership therein, cannot change the plain fact that NHL membership pertains to only one of the ten regulatory criteria set forth at 8 C.F.R. 204.5(h)(3). Elsewhere in his brief, counsel states that the petition at hand should be approved because petitions have been approved on behalf of other long-term NHL players.

Supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

> The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major

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[1] *Grimson v. INS*, 934 F.Supp. 965 (N.D. Ill. 1996) and *Muni v. INS*, 891 F.Supp. 440 (N.D. Ill. 1995).

league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

This interpretation has been upheld in federal court in the three decisions cited above. Eligibility in this case must rest on the petitioner's individual achievements, rather than relying primarily on the vague presumption that the petitioner must be extraordinary because of a long-term career in the NHL. The length of the petitioner's NHL career does not relieve him from the burden of demonstrating that his evidence fulfills at least three of the regulatory criteria.

The regulation at 8 C.F.R. 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish sustained national or international acclaim. The petitioner has submitted evidence that, counsel claims, meets four of the regulatory criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted "Career Highlights" printed from the Internet stating that the petitioner, while representing Sweden, has won one gold medal in the 1992 World Championships, two silver medals in the 1993 and 1997 World Championships, and one bronze medal in the 1999 World Championships. Statistics from the 1993, 1997, and 1999 World Championships indicate that the petitioner was indeed a primary contributor to the Swedish team's success. In addition, the information presented also shows that the petitioner was named the "Tournament's Best Forward" in the 1997 World Championships.

We find that the petitioner's receipt of World Hockey Championship medals (as an integral part of the Swedish national team) and his international recognition as the "Tournament's Best Forward" in the 1997 World Championships would satisfy this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Counsel asserts that the petitioner satisfies this criterion by virtue of his membership since 1992 on a NHL team. The petitioner was also named to the Swedish Olympic team in 1998 and 2002. We concur with the director's finding that the evidence presented satisfies this criterion. Given the level of accomplishment generally required to secure and maintain a place on a NHL or Olympic team, it appears reasonable to conclude that they are the functional equivalent of an association of the type contemplated in the regulations.

Published materials about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

We withdraw the director's finding that the articles presented fail to satisfy this criterion.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other *major* media. To qualify as major media, the publication should have significant national distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

The petitioner submitted numerous articles appearing in publications such as the *Chicago Tribune*, *Chicago Sun-Times*, *Calgary Sun*, *Hartford Courant*, *Calgary Herald*, and *The Hockey News*. Some of these articles are about the petitioner's hockey teams, with no particular attention focused on the petitioner; other articles consist of a number of short blurbs about a variety of players. Several articles, however, focus primarily on the petitioner.

In this case, media coverage of the petitioner is clearly not limited to a single city or country, and the articles appearing in *The Hockey News* and the *Chicago Tribune*, or those posted on ESPN's internet website, demonstrate an acceptable level of national media attention. Therefore, we find that the evidence presented is sufficient to demonstrate that the petitioner has been the subject of sustained major media coverage.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner submitted a letter from Michael Smith, General Manager of the Chicago Blackhawk Hockey Team, stating: "Under his current contract, [the petitioner] earns $1,550,000 for this season, plus incentives."

The director concluded that the above evidence did not satisfy this criterion because the petitioner had failed to provide comparative evidence of salaries earned by other NHL players. We concur with the director's finding.

On appeal, counsel asserts that the petitioner "commands a salary of over 1.5 million dollars, which is well above the mean NHL salary." Counsel offers no documentary evidence to support this claim. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In fact, according to statistics released by the NHL Player's Association, the average NHL salary for the 2000-2001 season was $1,642,590. This clearly contradicts counsel's statement that the petitioner's salary is "well above the mean NHL salary." The record contains no evidence showing that that the petitioner's salary is significantly higher than that of other starting centers or forwards in the NHL.

In this case, the petitioner has satisfied three of the lesser regulatory criteria required for classification as an alien of extraordinary ability. Pursuant to the statute and regulations as they are currently constituted, the petitioner qualifies for the classification sought.

In review, while not all of the petitioner's evidence carries the weight imputed to it by counsel, the totality of the evidence establishes an overall pattern of sustained acclaim and extraordinary ability. The petitioner has established that he has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise. The petitioner has also established that he seeks to continue working in the same field in the United States and that his entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefits sought under section 203 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.